

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DAVE McNEILL,

Respondent,

v.

CITY OF KANSAS CITY, MO,

Appellant.

DOCKET NUMBER WD77732

Date: April 28, 2015

Appeal from:
Jackson County Circuit Court
The Honorable Robert M. Schieber, Judge

Appellate Judges:
Division Two: Lisa White Hardwick, Presiding Judge, Victor C. Howard and Cynthia L. Martin, Judges

Attorneys:
Michael P. Healy, Lee's Summit, MO for respondent.
Tara M. Kelly, Christa J. Barter and Douglas McMillan, Kansas City, MO for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

DAVE McNEILL

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CITY OF KANSAS CITY, MO,

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Jackson County

Before Division Two: Lisa White Hardwick, Presiding Judge, Victor C. Howard and Cynthia L. Martin, Judges

The City of Kansas City ("City") appeals from the circuit court's judgment awarding Dave McNeill damages and prejudgment interest for the wrongful demolition of a building he owned. During the jury trial, the court excluded evidence of the City's order to demolish the building after finding that the order was legally insufficient and, therefore, irrelevant. The court also excluded the demolition order as a discovery sanction against the City. On appeal, the City contends that the circuit court lacked subject matter jurisdiction to find the demolition order invalid. The City further argues that the court erred in excluding the order because it was logically and legally relevant and its exclusion as a discovery sanction was unjust. Lastly, the City asserts that the court erred in awarding McNeill prejudgment interest.

AFFIRMED.

Division Two holds:

(1) The circuit court did not err in considering the validity of the demolition order in this wrongful demolition proceeding. The demolition order was facially void on the record because it exceeded the City's police powers as set forth in the City's Property Maintenance Code and was indefinite in light of the Property Maintenance Code's findings requirement. Therefore, the demolition order was subject to collateral attack.

(2) The circuit court did not abuse its discretion in excluding the demolition order. The void demolition order had no probative value on the issue of the City's adherence to the demolition procedures required by statute and ordinance; therefore, it was not logically relevant.

(3) The circuit court did not err in awarding McNeill prejudgment interest on the property damage award under Section 408.020, RSMo 2000. In demolishing McNeill's building, the City acted in excess of its police powers. Therefore, the demolition could properly be characterized as an indirect taking for purposes of awarding prejudgment interest. Furthermore, because the parties disputed only the amount of damages and not the measure of damages, McNeill's claim was liquidated.

Opinion by: Lisa White Hardwick, Judge

April 28, 2015

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